

MICHAEL C. COOK,
Plaintiff,

vs.

JULIAN ST. INN,
Defendant.

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No. C 07-02642 JW (PR)

ORDER OF DISMISSAL

(Docket No. 5)

DECISION

Federal courts must engage in a preliminary screening of cases in which

prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. § 1915A(b). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

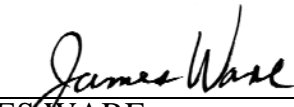
B. Legal Claims

Plaintiff’s claim of negligence against a private entity, Julian St. Inn, is not a cognizable claim upon which relief may be granted. First of all, § 1983 does not impose liability for violations of duties of care arising out of state tort law. See DeShaney v. Winnebago County Social Servs. Dep’t, 489 U.S. 189, 201-03 (1989). Furthermore, plaintiff has not demonstrated that defendant was acting under the color of state law. See West, 487 U.S. at 48. Accordingly, this complaint is DISMISSED for failure to state a claim upon which relief may be granted. See 28 U.S.C. § 1915A.

CONCLUSION

For the foregoing reasons, plaintiff’s request to proceed in forma pauperis (Docket No. 5) is DENIED. The complaint is DISMISSED. No fee is due.

DATED: July 9 2007



JAMES WARE
United States District Judge